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MORTGAGE, INC.
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8 IN THE UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 In Re:

11 ENRIQUE VELEZ,
12 Debtor,

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14 ENRIQUE VELEZ,
15 Plaintiff,

16 v.

17 PLAZA HOME MORTGAGE, INC., a
18 California corporation; WASHINGTON
19 MUTUAL BANK, a Delaware corporation; and
20 TRI-CITY REAL ESTATE & MORTGAGE, a
21 California limited liability company,
Defendants.

Chapter 13

Bankruptcy Case No. 08-53842 MM

Adversary Case No.: 09-05037 MM

**NOTICE OF MOTION AND
MOTION OF DEFENDANT,
PLAZA HOME MORTGAGE, INC.
TO DISMISS COMPLAINT
PURSUANT TO FRBP 7012(b)(6)**

Date: May 13, 2010

Time: 1:00 p.m.

Ctrm: 3070

Judge: Hon. Marilyn Morgan

22 TO: **ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

23 **PLEASE TAKE NOTICE** that on May 13, 2010 at 1:00 p.m. or as soon thereafter
24 as the matter may be heard, in the Courtroom of the Honorable Marilyn Morgan, United
25 States Bankruptcy Court, Northern District of California, located at 280 South First Street,
26 San Jose, California, 95113, Defendant Plaza Home Mortgage, Inc. ("Plaza") will and
27 hereby does move the Court for an order dismissing the action pursuant to the Federal
28 Rules of Civil Procedure 12(b)(6), made applicable to this adversary proceeding by


DEFENDANT PLAZA HOME MORTGAGE, INC.'S NOTICE OF MOTION AND MOTION TO DISMISS

1 Federal Rule of Bankruptcy Procedure 7012(b) (the "Motion").

2 This Motion is made on the grounds that the verified Third Amended Complaint
3 filed on or about March 23, 2010 fails to allege facts sufficient to state claims for relief
4 against Defendant Plaza for rescission under the Truth in Lending Act, quiet title, and
5 declaratory relief. This Motion is based on this Notice of Motion and Motion, the
6 Memorandum of Points and Authorities in support hereof, the Declaration of Gerald P.
7 Kennedy in Support of the Motion to Dismiss, the pleadings and other files herein, and
8 such other written and oral argument as may be presented to the Court.

9 DATED: April 9, 2010

PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP

11 By:  /s/ Gerald P. Kennedy
12 Gerald P. Kennedy, Esq.
13 John D. Alessio, Esq.
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